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October 23, 2014

BY ECF

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

RE: *Senisi v. Houghton Mifflin Harcourt Publishing Company*,
No. 13-cv-2891 (VSB).

Dear Judge Broderick:

The parties are jointly submitting this letter to update the Court on their discussions regarding Defendant Houghton Mifflin Harcourt Publishing Company's ("HMH") planned motion for summary judgment in advance of the status conference currently scheduled for October 29, 2014.

At the most recent status conference held on October 1, 2014, the Court directed the parties to meet and confer as to whether it was possible to narrow the scope of HMH's intended summary judgment motion, and in particular, whether any claims could be resolved voluntarily in advance of that motion. Counsel for the parties met in person on October 21, 2014 and discussed the various bases for summary judgment that HMH plans to present. Plaintiff's counsel requested HMH to identify the grounds upon which it intends to move for summary judgment as to the particular photographs at issue in the case prior to the meeting. HMH provided the attached chart to counsel for Plaintiff in advance of the meeting to advance the discussion and requested information back that might rebut the factual predicate for HMH's intended motion for summary judgment.

At the meeting, counsel discussed two primary summary judgment arguments that HMH plans to make: 1) that certain of the images in suit were never registered with the United States Copyright Office, as evidenced by the Copyright Office Deposit Indices of the registrations Plaintiff claimed covered her images, which HMH obtained directly from the public records of the United States Copyright Office and produced on June 6, 2014;

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and 2) that the titles involved in eight of the claims in suit were never published by HMH, but were exclusively published by a separate and unrelated company, Cengage Learning.

Regarding the first argument, Plaintiff's counsel contends that Plaintiff's copyrights in all of the images identified by HMH in fact have been registered. Regarding the second argument, counsel for HMH advised Plaintiff's counsel, consistent with HMH's discovery responses that the two college titles in suit were never published by HMH and that HMH did not exceed license terms for the one religion title in suit. Plaintiff's counsel advised of its position that HMH still may be liable for violating its license simply by providing copies of Plaintiff's photos without her permission to the publishing companies to which it sold these divisions. HMH does not agree with Plaintiff's legal position on this issue. In addition, both prior to and during the parties' meeting, Plaintiff's counsel noted that the chart provided by HMH did not identify any documents produced in discovery that would support HMH's position and thus asked for clarification as to the basis for HMH's motion. HMH's counsel explained, as it did during the status conference, that HMH intended to submit an affidavit from an HMH representative regarding the sale of HMH's College and Religion divisions to these two different publishing companies, Cengage and Our Sunday Visitor respectively. For all of the same reasons discussed during the prior conference, Plaintiff's counsel continues to believe that additional, narrow discovery is needed on these issues and that such discovery is appropriate under Rule 54(d)(1), a position with which HMH disagrees. Plaintiff's counsel also reiterated that Plaintiff would agree to withdraw or voluntarily dismiss claims related to publications that such additional discovery showed were not HMH's responsibility. HMH continues to seek judgment, rather than dismissal, on such claims.

In summary, at this juncture the parties have not agreed to resolve any of the claims in this case in advance of HMH's motion for summary judgment. Accordingly, HMH reiterates its request for a briefing schedule to move for summary judgment at this time and Plaintiff continues to oppose it. The parties will be prepared to discuss these matters further at the upcoming conference on October 29, 2014.

Respectfully submitted,



Steven F. Napolitano

cc: Kevin P. McCulloch

SENISI V. HMH – CLAIMS SUBJECT TO SUMMARY JUDGMENT

Compl. Row	Image Number	Claimed Registration No.	Summary Judgment Basis
1	3M9096-?PN-24505	VA 1-877-782	1. Unidentified claim. No title provided, no invoice provided, no invoice date provided, no evidence of use discovered. 2. Even if used, use is covered by Photo Researchers Master License. (See HMH-SENISI-00084)
2	8M9099-?PN-24505	VA 1-877-782	1. Unidentified claim. No title provided, no invoice provided, no invoice date provided, no evidence of use discovered. 2. Even if used, use is covered by Photo Researchers Master License. (See HMH-SENISI-00084)
3	359671-PN-27095	VAu 1-028-192	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969) 2. Use is covered by Photo Researchers Master License. (See HMH-SENISI-00084)
4	359672-PN-27095	VAu 1-028-192	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969) 2. Use is covered by Photo Researchers Master License. (See HMH-SENISI-00084)
5	BA3296	VAu 1-429-916	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969) 2. Use is covered by Photo Researchers Master License. (See HMH-SENISI-00084) 3. No evidence of use of the image discovered.
6	GS-AC-ASLconv3-5	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
7	PN-10031	VAu 986-976	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
8	AD-g4m_3701	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
9	PN-20923	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.

10	PN-28506	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
11	PN-10447	VAu 986-976	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
12	PN-20591	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
13	PN-29121	VA 1-897-760	1. Not currently planned for inclusion in summary judgment motion. Defendant is not waiving its right to add this claim to its summary judgment motion.
14	PN-26229	VAu 1-429-916	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969)
15	PN-28894	VAu 1-429-916	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969)
16	AA-SPR-S-0001	VAu 1-429-916	1. Image was not registered under claimed registration number. (See HMH-SENISI-00366-00969)
17	PN-24505	VA 1-877-782	1. Use covered by license. (See HMH-SENISI-00052; 00070-72)
18	FM-AC-09-Bab5-2	VAu 1-429-916	1. Use covered by license. (See SENISI 00284; HMH-SENISI- 00340)
19	AH-gPcyc_0676	VA 1-666-621	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.
20	AF-glb_0115	VAu 1-429-916	1. Invoice corresponds to an edition of a college textbook that was not published by HMH.